

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1314 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAJU-ALIAS RAJENDRASINH

CHANDRASINH SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR PS CHAMPANERI for Petitioner

Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. P.S.Champaneri for
the petitioner and learned A.G.P. Mr.D.P. Joshi for the
respondents.

1. The detention order dated 28-1-1999 passed by the
respondent no.2-Commissioner of Police, Ahmedabad City
against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention, supplied to the petitioner and produced at Annexure "B" inter alia indicate that in all four Prohibition cases have been registered against the petitioner, out of which three prohibition cases, namely, CR no.491/98 dt.27-11-1998, CR no.569/98 dt.26-12-1998, CR no.518/98 dt.7-12-1998 have been registered at Nashabandi Police Station East while the fourth case bearing Cr no.127/98 dt.27-10-1998 has been registered at Gandhinagar Police Station. That all the cases are pending investigation and in each of the cases Indianmade country liquor was seized from the possession of the petitioner. Over and above that, two witnesses on assurance of anonymity have supplied information in respect to incidents dated 5-1-1999 and 27-12-1998 regarding the antisocial activities of the petitioner.

3. That in consideration of the above stated material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That resort to enforcement of general law not being sufficient to prevent the petitioner from continuing his antisocial activity, it is necessary to pass the detention order under "PASA" and hence, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the Bar on behalf of the petitioner that on the date of passing the impugned order the petitioner was in police custody in respect to Cr no.491/98 and CR no.569/98 while he was in judicial custody in respect to CR no.127/98. That despite the said fact, the detaining authority has failed to consider the aspect of less drastic remedy of cancellation of bail available under under Section 437(5) of the Cr.P.C. which shows non application of mind rendering the impugned order invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention

order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case, perusal of the grounds of detention itself suggests that the detaining authority has construed the material on the basis of apprehension that the petitioner is likely to be released on bail in respect to CRs no.491/98, 569/98 and 518/98 and thereafter, the petitioner is likely to continue his antisocial activity. The said observation discloses non application of mind and non consideration of less drastic remedy like opposing and claiming cancellation of bail thereby the subjective satisfaction reached by the detaining authority is vitiated and the impugned order is rendered invalid.

7. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 28-1-1999 passed by the respondent no.2-Police Commissioner, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Raju alias Rajendrasinh Chandrasinh Solanki is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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